IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17173 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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KALPESH SURESHBHAI VARLI PATEL - Petitioner(s)
Versus
THE STATE OF GUJARAT THRO' THE SECRETARY & 2 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
MR IM PANDYA, AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 27/09/2006

ORAL JUDGMENT

1. The petitioner-detenu has filed this petition challenging the order of detention dated 15.04.2006 passed by District Magistrate, Navsari under the provisions of sub-Section (2) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as the 'PASA Act').

2. Mr Prajapati, learned Advocate for the petitioner has invited my attention to the order of detention dated

15.04.2006 by which petitioner-detenu was arrested and sent to Rajkot District Jail, Rajkot as well as to the grounds supplied by the detaining authority, therein. As the grounds of detention, one criminal case is shown registered against the petitioner-detenu being C.R. No. 423/06 dated 02.03.2006.

2.1 He has further submitted that in the order of detention it was stated that the detenu is carrying on anti-social activities and on the basis of solitary offence of 'bootlegging' registered against the detenu, he was termed as 'Bootlegger' within the meaning of Section 2(b)of the P.A.S.A. Act. It was also stated in the impugned order that as the said bootlegging activities of the detenu are dangerous and affecting maintenance of 'public order' and 'public health', order of detention has been passed against him.

2.2 He has further submitted that on the basis of only one criminal case registered against the petitioner-detenu, he cannot be termed as 'Bootlegger'. In support of his case he has placed reliance on a decision of this Court passed in the case of ***"Sohanlal Surajram Visnoi Vs. State of Gujarat and Ors."*** reported in 2004(2)GLR 1051 wherein it was held as under,

"It may be noted that the contention advanced on

> behalf of the petitioners that no preventive detention order can be recorded in a solitary incident or instance or offence cannot be accepted in *toto*. The detaining authority can pass the order of detention even on the basis of a solitary incident or instance, provided there is justifiable subjective satisfaction on objective material and consideration that such incident or offence is likely to create disturbance of "Public Order". Emphasis is laid on "Public Order" and not on "Law and Order" which belongs to the realm of general law. After having taken into account the statutory definitions of the persons branded as "bootlegger" or "dangerous person" under the P.A.S.A. Act, and detailed factual matrix of each case, the solitary incident or instance in question in these petitions has not been shown or spelt out from the record as affecting the "Public Order" or likely to create public disturbance or prejudicial or adverse to the maintenance of "Public Order", and therefore, the continued detention of the detenus in each case has not been shown to be justifiable, ..."

2.3 He has further placed reliance on a decision of this Court passed in the case of ***" Sandip Omprakash Gupta v. State of Gujarat & Ors"*** reported in 2004(1)GLR 864 wherein it was held as under,

> "There is only one registered offence under the Bombay Prohibition Act, which obviously, cannot disturb the peace of public tempo or place of public order, and therefore, it canot be considered to be prejudicial activities in any manner which may not prompt to say, that it would have disturbed the public peace or place of public order in the society. The allegation against the petitioner that he is selling liquor in the society, but there is nothing compelling to the persons in the society to buy liquor from the petitioner. Except this, no other activity which could disturb the public peace or the public order in the society is noticed or recorded against the petitioner. Therefore, such activity which is said to be have been carrying out by the petitioner, can normally be covered by the ordinary law to prevent him and

> it cannot be considered beyond capacity of ordinary law to deal with him."

2.4 Hence, he has submitted that the impugned order deserves to be quashed and set aside.

3. On the contrary, Mr I.M Pandya, learned A.G.P. for respondent-detaining Authority has supported the order of detention as well as grounds stated therein and has contended that the Authority has passed the impugned order after taking into consideration all the facts and circumstances of the case, and hence, no case is made out calling for interference of this Court.

4. As a result of hearing and perusal of the record it appears that in this case the only material is one criminal case registered against the petitioner-detenu and on the basis of that it cannot be said that the activity of the detenu has become a threat to the maintenance of 'public order' and 'public health'. The offence committed by the petitioner pertains to prohibition to which I have already made reference in my earlier part of the judgment. Mere involvement of petitioner in bootlegging activities may not amount to dangerous activity by petitioner-detenu and mere mention of them unless supported by any evidence cannot be said to be material for the purpose of arriving at subjective

satisfaction that the activity of the petitioner-detenu is prejudicial to the maintenance of 'public order' and 'public health'.

4.1 I am, therefore, of the view that the detaining authority has passed the order of detention without there being any credible or cogent material on record in this behalf. I have considered factual and legal aspects emerging from the record of the petition and considered the rival submissions and the facts of the case and also considered the judgment of this Court in the case of ***Sohanlal Sujaram Visnoi*** (Supra) and **Sandip Gupta**(supra). In view of the facts and circumstances of the present case and also ratio laid down in the cases mentioned above, the order of detention cannot be sustained and it deserves to be quashed and set aside.

5. In the result, this petition is allowed. The order of detention dated 15.04.2006 passed by District Magistrate, Navsari is hereby quashed and set aside. The detenu is, therefore, ordered to be set at liberty forthwith, if not required in connection with any other case by the Authority.

6. Rule is made absolute.

7. Direct service is permitted.

(K.S. Jhaveri,J.)

Divya//